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DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

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FILE: B-190287, B-190303

DATE: October 20, 1977

MATTER OF: Reliance Electric Company

DIGEST:

1. Protest of alleged impropriety in solicitation not filed prior to bid opening or to closing date for receipt of proposals is untimely and not for consideration.
2. Protest that solicitation should not have been set aside for small business concerns is dismissed since it appears that protester is primarily concerned with applicable size standard and has taken matter to Small Business Administration, which has authority to determine size standards.

Reliance Electric Company (Reliance) protests the award of 13 solicitations issued by the Veterans Administration (V.A.) for elevator maintenance services at various V.A. installations. Reliance protests the use of negotiation under one solicitation, and protests the small business set-aside status of the other 12 solicitations, alleging that such designation "arbitrarily and unduly restricts competition" and "is contrary to the best interests of the United States." Reliance's objection to the set-asides appears to be based on the application of the Small Business Administration's (SBA) size standard, pursuant to which Reliance does not qualify as a small business concern for purposes of award. In this regard, Reliance advises that it has prepared an application for certification by SBA as a small business under a revised size standard.

For the most part, the protest is either untimely or moot. The objection to the small business set-asides relates to an alleged deficiency in the solicitations. Section 20.2(b)(1) of our Bid Protest Procedures, 4 C.F.R. § 20.2(b)(1) (1977), provides that a protest based upon an alleged impropriety in any type of solicitation, which is apparent prior to bid opening or the closing date for receipt of initial proposals, must be filed "prior to bid opening or the closing date for receipt of initial proposals." With respect to eight of the solicitations, we have been advised that the bid opening date or date for receipt of

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proposals preceded Reliance's filing of its protest with this Office. We have been further advised that three of the protested solicitations, including the one involving use of negotiation, have been canceled, thereby rendering moot the protest insofar as it is directed to these solicitations.

With respect to the remaining two solicitations (one involving a sole source negotiated award made on September 30, 1977 and the other having a bid opening date of October 18, 1977), we see little point in our considering the matter. We have consistently held that the decision whether a particular procurement should be set aside for small business concerns is within the authority and discretion of the contracting agency. See Par-Metal Products, Inc., B-190016, September 26, 1977, 77-2 CPD _____. In that case we declined to consider a protest of the agency's decision not to set aside a procurement for small business. Although we continue to review complaints directed to the setting aside of procurements for small business to determine if there has been compliance with applicable regulations, see J.H. Rutter Rex Manufacturing Company, Inc., 55 Comp. Gen. 902 (1976), 76-1 CPD 182, it appears that in this case the protester's primary, if not sole, concern is that under the existing applicable size standard it and other firms similarly situated are (but should not be) excluded from participating in procurements that are set aside for small businesses exclusively.

Pursuant to 15 U.S.C. § 637(b)(6) (1970), the authority to determine size standards and the size status of a business concern for a particular procurement is vested exclusively in the SBA. Gibraltar Industries, Incorporated, B-188880, May 16, 1977, 77-1 CPD 345. As stated above, Reliance has in fact taken the matter up with SBA. Thus, we believe this matter is for resolution by Reliance and the SBA rather than this Office.

The protest is dismissed.

Milton J. Fowler
for Paul G. Dembling
General Counsel